# IN THE UNITED STATES DISTRICT COURT FOR THE SOUTHERN DISTRICT OF TEXAS HOUSTON DIVISION

United States Courts
Southern District of Texas
FILED

SEP 2 3 2004

Michael N. Milby, Clerk of Court

EQUAL EMPLOYMENT
OPPORTUNITY COMMISSION
Plaintiff

٧.

TEXAS COAST WAFFLES, INC. d/b/a
WAFFLE HOUSE #1381
Defendant.

H-04-3705

JURY TRIAL DEMANDED

#### ORIGINAL COMPLAINT

1. This is an action under Title VII of the Civil Rights Act of 1964, as amended, and Title I of the Civil Rights Act of 1991, as amended, to correct unlawful employment practices on the basis of sex, and to provide appropriate relief to Joan Vandewarker and a class of female employees who were adversely affected by such practices. The Defendant, Texas Coast Waffles, Inc. d/b/a Waffle House #1381 unlawfully denied female employees equal employment opportunities by subjecting them to sexual harassment in violation of Title VII. Additionally, Defendant unlawfully terminated Ms. Vandewarker in retaliation for complaining to management about the sexual harassment.

# JURISDICTION AND VENUE

2. Jurisdiction of this court is invoked pursuant to 28 U.S.C. §§451, 1331, 1337, 1343 and 1345. This action is authorized and instituted pursuant to Section 706 (f)(1) and (3) of Title VII of the Civil Rights Act of 1964, as amended, 42 U.S.C. §2000e-5(f)(1) and (3) ("Title VII") and Section 102 of the Civil Rights Act of 1991, as amended, 42 U.S.C. §1981A.

3. Venue is proper in this court because the unlawful employment practices alleged below were and are now being committed within the jurisdiction of the United States District Court for the Southern District of Texas, Houston Division.

#### **PARTIES**

- 4. Plaintiff, the Equal Employment Opportunity Commission ("Commission") is an agency of the United States of America charged with the administration, interpretation and enforcement of Title VII, and is expressly authorized to bring this action by Section 706 (f)(1) and (3), 42 U.S.C. §2000e-5 (f)(1) and (3).
- 5. Defendant Texas Coast Waffles, Inc. d/b/a Waffle House #1381 ("Waffle House") has continuously been and is now doing business in the State of Texas and the City of Seabrook and has continuously had more than 15 employees. Waffle House may be served with process by serving its registered agent in Texas, Larry Cannon, 1803 W. Main Street, League City, Texas 77573.
- 6. At all relevant times, Waffle House has continuously been an employer engaged in an industry affecting commerce with the meaning of Sections 701(b),(g) and (h) of Title VII, 42 U.S.C. §2000e(b), (g) and (h).

### STATEMENT OF CLAIMS

7. More than thirty days prior to the institution of this lawsuit, Joan Vandewarker filed a charge of discrimination with the Commission alleging violation of Title VII by Waffle House, her former employer. All conditions precedent to the institution of this lawsuit have been fulfilled.

- 8. Since at least 2001, Waffle House has engaged in unlawful employment practices at its restaurant #1381 located in Seabrook, Texas, in violation of Sections 703(a)(1) and 704(a) of Title VII.
- 9. Waffle House, by and through its agent, Corey Ritnour, a manager at the restaurant, subjected Ms. Vandewarker and other female employees to unwelcome sexual propositions and comments, sexual gestures, and offensive touching because of their sex, female. Specifically, among other things, Mr. Ritnour told female employees that he wanted them to engage in anal sex with him, requested female employees to touch his penis, forcibly made one female place her hand on his penis, made offensive comments about the breasts and buttocks of female subordinates, made offensive comments about his sex life to female employees and used sexually explicit language and gestures and engaged in other inappropriate workplace behavior. The sexual harassment was repeatedly reported to management at Waffle House, yet no effective action was taken to halt the harassment. At least one female employee, when she complained to management about the sexual harassment, was merely advised to avoid him. The complained of conduct was so sexually hostile and occurred with such frequency and severity that it affected the terms, conditions, benefits and privileges of employment and created a hostile work environment.
- 10. Ms. Vandewarker, as other women had before her, complained to management about the sexual harassment. As a result of her complaint, the hours she worked were cut and she was told that the restaurant had no hours for her any longer. She was informed that she was being terminated, that no one supported her complaint. Other women felt compelled to resign their employment with Waffle House in order to escape the

sexually hostile work environment.

- 11. Ms. Vandewarker and other female employees were subjected to a series of separate, harassing acts that collectively constituted an unlawful employment practice.
- 12. The unlawful employment practices complained of above were intentional and based on the gender of Ms. Vandewarker and the other female employees.
- 13. The effect of the practices complained of above has been to deprive Ms. Vandewarker and other female employees of equal employment opportunities and otherwise adversely affect their status as employees, because of their gender, by requiring them to be subjected to sexual harassment in the workplace.
- 14. The unlawful employment practices described above were committed with malice or with reckless indifference for the federally protected civil rights of Ms. Vandewarker and other female employees.

### PRAYER FOR RELIEF

WHEREFORE, the Commission respectfully requests that this Court:

- 15. Grant a permanent injunction enjoining Waffle House, its officers, successors, assigns and all persons in active concert or participation with it, from engaging in employment practices which discriminate on the basis of sex;
- 16. Order Waffle House to institute and carry out policies, practices and procedures which provide equal employment opportunities for women and which eradicates the sexually hostile work environment;
- 17. Order Waffle House to make Ms. Vandewarker whole by providing appropriate back pay, with prejudgment interest in amounts to be determined at trial, and

other affirmative relief necessary to eradicate the effects of the unlawful employment practices she was subjected to;

- 18. Order reinstatement into a comparable position for Ms. Vandewarker or award front pay in the amounts to be proven at trial if reinstatement is impractical;
- 19. Order Waffle House to make whole those females who were constructively discharged from their employment as a result of the sexual harassment by providing appropriate back pay, with prejudgment interest in amounts to be determined at trial, and other affirmative relief necessary to eradicate the effects of the unlawful employment practices they were subjected to;
- 20. Order reinstatement into comparable positions for each of the class of females who were constructively discharged from their employment as a result of the sexual harassment or award front pay in the amounts to be proven at trial, if reinstatement is impractical;
- 21. Order Waffle House to pay compensatory damages to Ms. Vandewarker and to each of the class of females subjected to sexual harassment in the workplace for their past and future pecuniary losses resulting from the unlawful employment practices described above;
- 22. Order Waffle House to pay compensatory damages to Ms. Vandewarker and to each of the class of females subjected to sexual harassment in the workplace for their past and future non-pecuniary losses including emotional pain, suffering, inconvenience, mental anguish, loss of enjoyment of life, and other non-pecuniary losses they suffered as a result of the unlawful employment practices described above, in amounts to be proven at trial;

- 23. Award punitive damages to Ms. Vandewarker and to each of the class of female employees of Waffle House subjected to the unlawful employment practices described above, in amounts to be proven at trial;
- 24. Award pre-judgment and post-judgment interest on all amounts recovered as allowed by law;
- 25. Order all affirmative relief necessary to eradicate the effects of its unlawful employment practices;
  - 26. Award the Commission its costs in this action; and
  - 27. Grant such other and further relief as the Court deems necessary and proper.

### JURY TRIAL DEMANDED

28. The Commission requests a jury trial on all questions of fact raised by its complaint.

Respectfully submitted,

EQUAL EMPLOYMENT
OPPORTUNITY COMMISSION

ERIC S. DREIBAND General Counsel

JAMES L. LEE Deputy General Counsel

GWENDOLYN YOUNG REAMS Associate General Counsel

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Bv:

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(b) COUNTY OF RESIDENCE OF FIRST LISTED PLAINTIFF(EXCEPT IN U.S. PLAINTIFF CASES)		<del></del>	COUNTY OF RESIDENCE OF FIRST LISTED DEFENDANT  (IN U.S. PLAINTIFF CASES ONLY)  NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE TRACT OF LAND INVOLVED		
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II. BASIS OF JURISDICTION (PLACE AN x IN ONE BOX ONLY)			III. CITIZENSHIP OF PRINCIPAL PARTIES  (For Diversity Cases Only)  FOR PLAINTIFF AND ONE BOX FOR DEFENDANT)		
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DOCKET NUMBER

VIII. RELATED CASE(S) IF ANY (See instructions)

UNITED STATES DISTRICT COURT

SIGNATURE OF ATTORNEY OF RECO